

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 961 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SAROJBEN M..SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR AD SHAH for Petitioners

MR DN PATEL,APP for Respondent No. 1

SERVED for Respondent No. 2

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CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 17/01/97

ORAL JUDGEMENT

Dr. Sarojben Madhusudan Shah and one another by this Misc.Criminal Application has moved this court under section 482 of the Criminal Procedure, Code, 1973, interalia praying for quashing and setting aside the

process issued by the learned Metropolitan Magistrate, Ahmedabad, pursuant to the complaint filed by the respondent no.2 Mahendrakumar Punjalal Chavda for the alleged offences punishable under sections 304-A read with section 114 of IPC, which came to be registered as Criminal Case No. 686/89.

2. Heard Mr.Saurin Shah, the learned advocate for Mr.A.D.Shah and Mr. D.N.Patel, the learned APP. The respondent, though served is absent.

3. When this matter was called out on 7-1-1997, it was submitted by Mr. A.D.Shah, the learned advocate for the petitioners that in the instant case, second complaint was also filed before the police, wherein the chargesheet is already filed before the learned Magistrate. In that view of the matter, the learned APP was directed to keep the concerned Investigating Officer or his successor in office and inform to remain present before this court today to verify the correctness of the submissions of Mr.Shah. Today, Mr.D.N.Patel, the learned APP has placed a letter dated 16-1-1997 addressed to him by Shri R.S.Patel, Sr. PSI, Shahibag Police Station, Ahmedabad, wherein it is stated that the chargesheet for the alleged offence against (1) Dr.Sarojben M.Shah, (2) Dr. Pramodbhai Chhotubhai Gandhi; and (3) Truptiben, daughter of Vinaychandra has been submitted on 5-8-1989. When inquired about the presence of the police officer, the learned APP submitted that since he had already received a report, he has not kept him present. The aforesaid letter dated 16-1-1997 is directed to be taken on record.

4. Taking into consideration the uncontroverted position viz. that the chargesheet against petitioners is already filed, it is indeed not necessary to keep the parallel proceedings pending before the very court for the very same offences. It is true that technically speaking if at the end of the trial the learned Magistrate acquits the accused, and the State does not prefer any appeal, in that case, the question may arise that since these proceedings on the basis of the private complaint having been quashed, the original complainant has no locus to challenge the same by filing appeal. For this purpose, it is clarified that in such an eventuality, the complainant shall have locus to file an appeal. In view of the aforesaid discussion, the process issued by the learned Magistrate is hereby quashed and set aside. A copy of this order shall be kept in the main file in which the chargesheet is filed.

5. Taking into consideration the fact that the alleged offence is of the year 1988, the trial court is directed to expedite the trial and decide the same as expeditiously as possible giving it top-most priority.

6. In the result, this petition is allowed. Rule made absolute.

7. The office is directed to immediately forward a copy of this judgment to (1) the respondent No.2 and (2) the concerned Court.

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